

**IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA**

Cr. Appeal No.544 of 1999

Reserved on 30.11.2006

Date of decision: 14.12.2006

State of H.P.

Appellant

Versus

Paras Ram & another

Respondents

Coram

The Hon'ble Mr. Justice V.K.Ahuja, J.

Whether approved for reporting¹?

For the appellant: Mr.Ashutosh Burathoki, Addl. Advocate General.

For the respondents: Mr.Ashwani Pathak, Advocate.

V.K.Ahuja, J.

This is an appeal filed by the Appellant - State of Himachal Pradesh against the judgment of the Court of learned Judicial Magistrate Ist Class, Bilaspur dated 17.5.1999, vide which the respondents were acquitted of the charge framed against them under Sections 324, 323, 506 read with Section 34 of the Indian Penal Code.

Briefly stated, the facts of the present case are that on 23.6.1996 at 3.30 p.m. a report was lodged with the police by one Parkash Chand that on the previous day at 12.30 p.m. when he was fixing stones in his land for the check dam both the accused persons came there started giving beatings to him and he was rescued by Laturia Ram, maison of Hamirpur. It was also alleged that at that time Gorkhia Ram accused gave him a tooth bite on his back and both the accused have given him blows with legs and fist. They also gave threat to him while reaching

Whether the reporters of Local Papers may be allowed to see the Judgment?

the place. On this report, a case was registered and challan was filed before the learned trial court. The learned trial court tried both the appellants who were acquitted of the charge as detailed above.

I have heard Mr.A.Burathoki, learned Additional Advocate General for the appellant and Mr.Ashwani Pathak, learned counsel for the respondents and have also gone through the record of the case.

The submissions made by the learned Additional Advocate General for the State were that the guilt of the accused persons had been established from the statement of PW-4 Parkash Chand, complainant which has been duly corroborated by PW-5 Ramji Dass father of the complainant and one PW-7 Pinku alias Rakesh Kumar has also corroborated the statement and therefore the learned trial court had wrongly concluded that the guilt of the accused persons was not established and as such those findings are liable to be reversed.

On the other hand, Mr.Ashwani Pathak, learned counsel for the respondents had supported the impugned judgment for the reasons given therein and had also pointed out some infirmities in the prosecution case which shall be referred below.

On a perusal of the record of the case it is clear that the most material witnesses are the complainant himself as PW-4, PW-5 Ramji Dass and PW-7 Pinku alias Rakesh Kumar whose statements have to be seen as to whether they proved the guilt of the accused persons or not. PW-4 complainant has stated that he was present in his field and was fixing stones, the accused persons came there and asked him as to why he was dismantling the danga. He told them that he was not dismantling the danga. But both the accused came there, caught hold of the complainant from his neck and threw him on the ground. He was inflicted blow on his eye and he cannot say with which weapon he was

hit. He further stated that accused Gorkhia gave him tooth bite. He further stated that on hearing his cries his wife and his father, and PW Rakesh came there and both the accused ran away from the spot. In cross-examination he has stated that he had told the Medical Officer about the tooth bite. A perusal of the medico legal certificate showed that he had suffered three abrasions, including one on left eye brow and one was on the back side corresponding to human teeth bite. Thus the medical evidence corroborates his version. In cross-examination he again stated that his wife and his father had come to the spot and rescued him, whereas a perusal of Ex..PA with which he was confronted shows that there is no mention of the fact that he was rescued by his wife and father, therefore the statement of PW-5 Ramji Dass his father has to be taken with caution since the possibility that his name was introduced subsequently cannot be ruled out. In FIR Ex.PA he only mentioned the name of one Laturia Ram, maison of Hamirpur who had rescued him at that time. It cannot be presumed that the complainant had forgotten to mention the name of his wife and father who had rescued him at that time. In so far as Laturia Ram is concerned he was not cited as a witness by the police and as such the only eye witness named by the complainant was not produced by the prosecution.

Coming to the testimony of PW-5 Ramji Dass who is the father of the complainant and as such an interested witness whose name was not mentioned in the FIR, therefore his statement has to be scrutinized with more care and caution. He stated that he heard the cries of his son and his daughter-in-law came there and rescued him. At that time both the accused persons had thrown the complainant on the ground and were giving beatings to him. He also stated about the teeth bite given

by Gurkhia accused on the back of Parkash Chand. He is very certain that at that time he and his daughter-in-law only were present and he has ruled out the possibility of Laturia Ram or PW-7 Pinku alias Rakesh Kumar having been present at that time. In cross-examination he demolishes his case by stating that he had reached the spot after half an hour and it is not clear if he reached the spot after half an hour of the occurrence or how he has stated about his reaching the spot after half an hour. He stated that at the time of medical they had told the medical officer about the occurrence and therefore in the history required to be recorded in the MLC Ex.P3 it should have been mentioned as to how the complainant had suffered the injuries. A perusal of Ex.PB MLC shows that the only history mentioned was 'alleged being beaten' up but nothing more was mentioned which could have corroborated the version of the complainant. In cross-examination he came up with the plea that Pinku witness also reached there prior to him though in examination-in-chief he was very sure that he and his daughter-in-law had only reached there. He stated that the complainant was being given beatings by the accused persons with danda which was not the case of the complainant and therefore the statement of the complainant cannot be said to have been corroborated by the statement of this witness.

PW-7 Pinku alias Rakesh Kumar stated that he heard the voice of Parkash Chand and when he saw one person had caught hold of Parkash Chand and thrown him on the ground. He further stated that Parkash and Hem Raj had met him at Panjgain. They told him that Paras Ram and his brother had given beatings to him who had an injury on his head. It is not the case of the complainant that he had suffered any injury on the head which was only on the eye and the back. His statement clearly shows that he had not witnessed the occurrence and

had learnt about the occurrence from the complainant at the hospital. Therefore his statement also does not corroborate the testimony of complainant. The statements of other witnesses are not material and have been discussed by the learned trial court also.

On a perusal of statements of these witnesses, it is clear that the findings recorded by the learned trial court acquitting the appellants do not suffer from any perversity so as to interfere with those findings. Thus the appeal filed by the appellant is liable to be dismissed which is dismissed accordingly and the findings of the learned trial court are affirmed. Bail bonds furnished by the respondents are discharged.

December 14,,2006(g)

(**V.K.Ahuja**), J.

